

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

Estate of Phillip Bivens; the Estate of Larry Ruffin; the
Estate of Bobby Ray Dixon, Laturas Smith and
Carrie Strong

Civil Action No. 2:13CV8KS-MTP

v.

Forrest County; City of Hattiesburg; Hattiesburg Police Officer Raymond Howell;
Forrest County Sheriff, Gene Walters; Forrest County Sheriff's Deputies
Joe Hopstein, Herbert Hart, Terry Martin, Henry "Red" Brown, Forrest County Regional Jail
Complex Guards Wayne R. Taylor and Jim Erwin, the Estate of Arlon Moulds, the Estate of
Larry James, and the Estate of R.E. "Eddie" Clark, John and Jane Does Officer and Supervisors

DEFENDANTS' CONSOLIDATED RESPONSE TO THE SCHULTEA REPLY

COMES NOW, the Defendants, Forrest County (Forrest County Sheriff's Department)
(by and through its counsel, David Miller, S. Robert Hammond, William R. Allen who
previously represented Gene Walters but is no longer a party due to his death, filed Suggestion of
Death, and no substitution of a proper party.¹), City of Hattiesburg and Raymond Howell (by and
through their counsel, Charles Lawrence), Joe Hopstein, Herbert Hart and Terry Martin, (by and
through their counsel, Scott J. Schwartz), Estate of Larry James and Jim Erwin, (by and through
their attorney, Lin Carter who previously represented Wayne Taylor but is no longer a party due
to his death, filed Suggestion of Death and no substitution of a proper party.²), Henry Brown, the
Estate of R.E. Clark, and the Estate of Arlon Moulds³, (by and through their counsel, Derek
Arrington) (collectively "The Defendants") and files this their Consolidated Response to the

¹ No response is necessary but should one be required, counsel will so comply.

² No response is necessary but should one be required, counsel will so comply.

Schultea Reply and would show this Honorable Court the following to wit:

AFFIRMATIVE DEFENSE ONE

The Defendants hereby incorporate all denials and affirmative defenses previously plead to the Plaintiffs' Complaint, First Amended Complaint and Second Amended Complaint.

AFFIRMATIVE DEFENSE TWO

The Defendants hereby adopt and reallege all affirmative defenses asserted by any other Defendant in this matter.

AFFIRMATIVE DEFENSE THREE

The Defendants deny all allegations contained in the *Schultea* Reply not specifically admitted hereafter.

AFFIRMATIVE DEFENSE FOUR

The Defendants reserve the right to assert further and other affirmative defenses as discovery has not been concluded.

AFFIRMATIVE DEFENSE FIVE

The Defendants allege that the Plaintiffs have failed to plead their respective claims with enough precision and specificity to raise a genuine issue of the fact as to each of the Plaintiffs claims against each individual Defendant. Defendants further assert that Plaintiffs' *Schultea* Reply fails to meet the burden imposed by law and by the Court's Order entered on August 28, 2014.

AFFIRMATIVE DEFENSE SIX

The individual Defendants reaffirm and reassert their respective Motions to Dismiss

³ It is alleged that Arlon Moulds was an employee of Forrest County, which he was not.

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and their respective Motions to Dismiss on Qualified Immunity.

AFFIRMATIVE DEFENSE SEVEN

The Defendants assert the affirmative defense of offset for payments made by the State of Mississippi or any other person, company or entity to the Plaintiffs (or their heirs and/or estates) for any damages they claim to have suffered as a result of their incarceration and alleged wrongful conviction.

AND NOW having set forth their affirmative defenses and to the extent that an answer is required the Defendants asserts:

1.

The Defendants hereby deny as worded all of the additional factual allegations contained in paragraphs 1 through 113 of the *Schultea* Reply.

2.

The Defendants deny as worded all the allegations contained in unnumbered paragraph under the heading “The Individual Defendants’ Unconstitutional Acts” including all paragraphs and subparagraphs of (I.) through (VIII.). The Defendants specifically deny all allegations against Deputy R.E. “Eddie” Clark, Deputy Henry “Red” Brown, Chief Deputy Joe Hopstein, Detective Ernest Arlon Moulds, Deputy Terry Martin, Deputy Larry James, Deputy Herbert Hart, Wayne R. Taylor and Jim Erwin.

3.

The Defendants further specifically deny all allegations under the heading “Particular

Allegations of Fact Supporting Plaintiffs' Conspiracy Claims" including all subparagraphs thereof which encompass (I.) through (xiii.).

AND NOW having set forth their affirmative defenses and their Response to the *Schultea* Reply the Defendants respectfully request that this Court rule on the individual Defendants' pending Motions to Dismiss the Plaintiffs' Complaint for their Failure to Comply with Rule 12(b)(6) of the Federal Rules of Civil Procedure and Motions to Dismiss Based on Qualified Immunity and grant the same.

This the 3rd day of November, 2014.

RESPECTFULLY SUBMITTED,

FORREST COUNTY

S/DAVID MILLER

DAVID MILLER

S/ROBERT HAMMOND, JR.

S. ROBERT HAMMOND, JR.

S/WILLIAM R. ALLEN

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CITY OF HATTIESBURG AND
RAYMOND HOWELL

S/CHARLES LAWRENCE

CHARLES E. LAWRENCE, JR.

HERBERT HART, JOE HOPSTEIN
AND TERRY MARTIN

S/ SCOTT J. SCHWARTZ

SCOTT J. SCHWARTZ, P.A.

JIM ERWIN, ESTATE OF LARRY JAMES

S/LIN CARTER

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CERTIFICATE OF SERVICE

I, Scott J. Schwartz, do hereby certify that I have this day caused to be served on all counsel of record the foregoing through the ECF Filing System:

THIS the 3rd day of November, 2014.

S/Scott J. Schwartz

Scott J. Schwartz, P.A.